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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/820,270

04/08/2004

Patrick G. Linnane

CV0331 NP

7542

26079

7590

06/09/2009

CONVATEC INC.

100 HEADQUARTERS PARK DRIVE

SKILLMAN, NJ 08558

EXAMINER

BROWN, MICHAEL A

ART UNIT

PAPER NUMBER

3772

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DELIVERY MODE

06/09/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/820,270	<b>Applicant(s)</b> LINNANE ET AL.	
	<b>Examiner</b> MICHAEL BROWN	<b>Art Unit</b> 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-16 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-16 and 18-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 13-16, 18 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collyer (EP '113) in view of McConnell, along with Carmell.

Collyer discloses in figures 1-10 a wound dressing for post-operative site requiring drainage comprising a thin film 3, with an adhesive (page 3, lines 23-25), applied to one surface thereof, an absorbent layer 1 positioned on the adhesive surface (fig. 1, page 3, lines 23-25) of the thin film, the dressing having an aperture (figs. 9-10) and is slit (figs. 9-10), from the aperture to an outer edge of the dressing (fig. 10), the dressing is circular or elliptical (lines 32-35) in shape, radial cuts (extend from the aperture in the dressing but not to an outside edge of the dressing (fig. 10), the film is a polyurethane film (col. 3, line 20), the film is an expandable polyurethane foam (abstract, lines 4-6) laminated to polyurethane foam 3, the film 3, extends beyond the absorbent layer (fig. 8) for securing the dressing to the skin, the absorbent layer is the wound contacting layer (the absorbent layer contacts the wound), an adhesive (page 6, lines 19-20) that overlies the absorbent layer and the adhesive layer is apertured (the aperture in figs. 9-10) passes through the adhesive layer that overlies the absorbent layer. However, Collyer doesn't disclose the slit being in a curved path from the aperture to an outside edge of the dressing or the absorbent layer not extending to the

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edge of the slit. McConnell teaches in figures 1-3 a medical tube holder comprising a slit 15 that is in a curved path (fig. 2). Carmell teaches in figure 1 a wound dressing comprising an absorbent layer 22 that doesn't extend to the edge 36 of a film 14, that is transparent. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the slit disclosed by Collyer could be fabricated in a curved path as taught by McConnell in order allow tubes exiting the ends of the dressing to form various angles with each other. Also the shape of the slits being curved versus straight doesn't provide any novelty over the prior art. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the film disclosed by Collyer could be fabricated transparent as taught by Carmell in order to allow the medical attendant to see through the dressing to observe the wound doing the healing process. The absorbent layer disclosed by Collyer could be fabricated not to extend to the edge of the slit in order to allow the edge to be free of the absorbent layer while at the same time having an adhesive on the edge. The second adhesive layer can be used as a wound contacting layer.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Stickels '575.

Collyer discloses in figures 1-10 a wound dressing, substantially as claimed. However, Collyer doesn't disclose the absorbent material being transparent. Stickels teaches a wound dressing comprising an absorbent material that is transparent to allow for visual inspection of the wound (col. 11, pages 1-20). It would have been obvious to one having ordinary skill in the art at the time that invention was made that the

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absorbent layer disclosed by Collyer could be fabricated transparent as taught by Stickels in order to allow the medical attendant to see the wound through the absorbent layer.

Claims 7-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Jacques.

Collyer discloses in figures 1-10 a wound dressing, substantially as claimed. However, Collyer doesn't disclose the absorbent layer being fibrous, the absorbent layer including gel forming fibers or the absorbent layer being a carboxymethylated (fibers) fabric. Jacques teaches a wound dressing comprising an absorbent layer that is fibrous (col. 2, lines 45-48), has gel fibers (col. 2, lines 46-48) and carboxymethylated fibers (col. 2, line 61-63). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the absorbent layer disclosed by Collyer could be made of a fibrous material, the gel material and carboxymethylated fibers as taught by Jacques. The fibrous material, the gel fibers and the carboxymethylated fibers can be used to absorb exudates coming from a wound. The carboxymethylated cellulose fabric having a degree of substitution of cellulose groups measured by IR spectroscopy in the range of 0.12 to 0.45 is a design choice. Jacques, also teaches in col. 2, line 65 alginate fibers.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Lindsay.

Collyer discloses in figures 1-10 a wound dressing, substantially as claimed. However, Collyer doesn't disclose dressing being made from lyocell. Lindsay teaches

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in col. 12, lines 43-45 a wound dressing having lyocell therein. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the wound dressing disclosed by Collyer could be fabricated of lyocell because it an absorbent material that would absorb exudates.

### ***Response to Arguments***

Applicant's arguments filed February 11, 2009 have been fully considered but they are not persuasive. Applicant argues that there is no suggestion to alter the slit of Collyer for any reason or a curved slit would provide a better seal, enhancing conformability and reducing the risk of leakage and infection. However, Colleyer was used to set forth the environment of a wound dressing with a slit. McConnell was used as a modifier to construct the slit in the shape of a curve. The teaching of McConnell doesn't have to expressively recite that the curved slit is used to perform the same function as the curved slit in the present invention. The curved slit as taught by McConnell simply has to be capable of performing the same function. Applicant argues that the prior art lacks an absorbent layer that doesn't extends to the edge of the slit. Clearly, Cartmell teaches an absorbent material 22 that doesn't extend to the outer edge 36 of a slit 30. Applicant argues that Collyer doesn't disclose a dressing that has an aperture and is slit to an outer edge wherein the absorbent layer doesn't extend to the edge of the slit. However, Collyer discloses a dressing including an aperture, a slit and an absorbent layer. Cartmell was used as a modifier to provide a teaching of the absorbent layer not extending to the edge of the slit. McConnell was used as a modifier to provide a teaching of a curved slit used to hold an object (a medical tube) in place.

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Applicant argues that McConnell doesn't relate to a wound dressing. The examiner concurs. However, McConnell wasn't used to disclose, suggest or teach a wound dressing. McConnell was used to provide a teaching of a curved slit used to hold a medical tube or any other medical device in place.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL BROWN whose telephone number is (571)272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Brown/  
Primary Examiner, Art Unit 3772